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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,756	08/19/2003	Shigenobu Sato	P24072	3012
7055	7590	08/10/2005	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			STEWART, ALVIN J	
			ART UNIT	PAPER NUMBER
			3738	
DATE MAILED: 08/10/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/642,756

Applicant(s)

SATO ET AL.

Examiner

Alvin J. Stewart

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Response to Arguments

Applicant's arguments with respect to claims 1, 2 and 4-6 have been considered but are moot in view of the new ground(s) of rejection.

Regarding the 35 USC 112, first paragraph, the Examiner maintains the rejection until the Applicant's representative clearly discloses, what is the width of the implant?

If for the Applicant's representative the width of the implant is the height of the implant (in Fig. 2B) running for point 13 of curve 21A to point 13 of curve 21B, then the Examiner will withdraw the rejection. However, if the width of the implant is the length of the implant running from the two side surfaces, then the rejection is going to be maintained.

For the Examiner point of view the length running from point 13 of curve 21A to point 13 of curve 21B is the height of the implant and the length running from the two side surfaces of the implant is the width.

Note: if the width of the implant runs from point 13 to point 13 in Fig. 2B, then the specification lacks of antecedent basis (see below).

Regarding claims 1, 2 and 4-6, the Examiner maintains the previous rejection, except the 102 (b) rejection because the Applicant's representative added the limitations of claim 3 in claim 1.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Art Unit: 3738

Claims 2 and 4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Nowhere in the specification discloses a width of the middle of the spacer that is greater than a width of at least one end of the spacer. Applicant must show support of this in the specification or delete the above structure limitations from claim 2.

Claim Objections

Claim 6 is objected to because of the following informalities: the Applicant's representative repeats the structure limitations of claim 6, lines 7 and 8 in lines 14 and 15. Appropriate correction is required.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "... is greater than a width of at least...".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 and 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin US Patent 6,080,158 in view of Lin US 6,325,827 B1.

Art Unit: 3738

Lin discloses an intervertebral implant (100) comprising a body defined by a pair of upper (120) and lower (130) surfaces and a pair of side surfaces (160) and a withdrawal preventer comprising a plurality of linear claw portions (121). Finally, the body has a distance between the upper and lower surfaces at the front side of the intervertebral spacer is greater than a distance between the upper and lower surfaces at the rear side of the intervertebral spacer (see Fig. 2). Finally, the width (height of the implant) in the middle portion of the body is wider than at the two ends.

However, Lin does not disclose claws having asymmetric triangular shape with surfaces having different angles.

Lin ('827) teaches an implant comprising a plurality of asymmetrical claw portions having different angles for the purpose of facilitating the insertion of the implant and avoiding the expulsion of the implant when is already implanted (col. 5, lines 6-15).

It would have been obvious to one having ordinary skill in the art at the time the invention was to modify the claw portions of the Lin reference ('158) with the claw portions of the Lin reference ('827) in order to facilitate the insertion of the implant and avoid the expulsion of the implant when is already implanted.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lin US Patent 6,080,158 in view of Lin US 6,325,827 B1 in further view of Brantigan US Patent 5,425,772.

Lin as modify by Lin discloses the invention substantially as claimed. However, Lin does not disclose a claw portion extending across the body from one side to the other.

Art Unit: 3738

Brantigan discloses an intervertebral implant comprising a plurality of claw portions extending across the body from one side to the other for the purpose of attaching the implant into adjoining vertebrae faces.

It would have been obvious to one having ordinary skill in the art at the time the invention was to modify the interrupted claw portions of the Lin reference with the non-interrupted claw portions of the Brantigan reference in order to attach the implant into adjoining vertebrae faces.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J. Stewart whose telephone number is 571-272-4760. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ALVIN J. STEWART
PRIMARY EXAMINER
Art Unit 3738



August 05, 2005.